

Application Serial No.: 09/942,567
Reply to Office Action dated January 26, 2006

REMARKS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 19-26 are presently active in this case.

In the outstanding Official Action, Claims 19-26 were rejected under 35 U.S.C. 103(a) as being unpatentable over Kumozaki et al. (U.S. Patent No. 5,539,564) in view of Klink (U.S. Patent No. 5,706,277). Claims 19-26 were rejected under 35 U.S.C. 103(a) as being unpatentable over Touma et al. (U.S. Patent No. 6,288,809) in view of Klink (U.S. Patent No. 5,706,277). For the reasons discussed below, the Applicants request the withdrawal of the obviousness rejections.

The basic requirements for establishing a *prima facie* case of obviousness as set forth in MPEP 2143 include (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings, (2) there must be a reasonable expectation of success, and (3) the reference (or references when combined) must teach or suggest all of the claim limitations. Furthermore, the proposed modification cannot render the prior art unsatisfactory for its intended purpose. (MPEP 2143.01 V.) The Applicants submit that a *prima facie* case of obviousness cannot be established in the present case for the reasons set forth below.

The Official Action separately cites the Kumozaki et al. reference and the Touma et al. reference for all of the features recited in independent Claims 19 and 23, except for the

teaching of an optical line terminal that is configured to send a first passive optical network section trace (PST) message, and an optical network unit that is configured to receive the PST message and that is configured to switch transmission of data traffic to the optical line termination along either one of the working optical network and the standby network based on the PST message. The Official Action acknowledges that the Kumozaki et al. reference and the Touma et al. reference fail to teach the above features. Accordingly, the Official Action combines the Klink reference with each of the Kumozaki et al. reference and the Touma et al. reference in order to supplement the deficiencies therein. However, the Applicants note that there must be a motivation for such a combination, and the Applicants respectfully submit that such a motivation is not present.

The Kumozaki et al. reference and the Touma et al. reference both relate to point-to-multipoint optical transmission systems with a central station and a multiplicity of subscribers in communication with the central station.

The Kumozaki et al. reference describes a system that is provided with a plurality of office transceivers in the central office equipment, and the each of the subscribers is provided with at least one subscriber transceiver. The system is designed so that a redundancy system is built-in by providing one of either the office transceivers, a plurality of subscriber's transceivers or the optical connection device, to connect the two sets of transceivers at all times. One of these redundancy systems provides an operating connection between each of the office transmitters which are connected to the office transceivers and each of the subscriber transmitters which are connected to the subscriber transceivers. Therefore, when a

malfuction occurs somewhere in the optical network, the least number of the malfunctioning components need to be switched over to the normally functioning system to maintain continued communication services, in order to provide an interactive point-to-multipoint communication service.

To the contrary, the Klink reference specifically and repeatedly describes a system in which only *two terminals* are connected to one another. The Klink reference describes a change-over method that is specifically designed to work in a point-to-point system using control information K1, K2 of a first and second type that correspond to selection signals to be used in one-to-one communication. One of ordinary skill in the art would not have even looked to such a point-to-point communication system such as in the Klink reference when determining a manner in which to operate a point-to-multipoint system such as in the Kumozaki et al. reference, due to the substantial differences between such systems. It is unclear whether the change-over system of the Klink reference can even be adapted to a point-to-multipoint system like that in the Kumozaki et al. reference, since the Klink reference never even contemplates such a modification. Additionally, if the Kumozaki et al. reference is modified to a point-to-point system in order to incorporate the change-over method of the Klink reference, then such a modification clearly would render the system of the Kumozaki et al. reference unsatisfactory for its intended purpose and would be contrary to the use of a redundancy system in some of the multiplicity of transceivers in order to operate the system described therein thus changing the principle of operation of the system in the Kumozaki et al. reference.

As noted in MPEP 2143.01, obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention *where there is some teaching, suggestion, or motivation to do so.* (Emphasis added.) Therefore, regardless of whether the claims of the present application expressly distinguish between a point-to-point system and a point-to-multipoint system, *in order to combine the teachings of two references in the manner suggested in the Official Action there must be a motivation to make such a combination* without a reliance on hindsight. The two systems described in the Kumozaki et al. reference and the Klink reference differ to an extent that such a motivation simply did not exist at the time of the present invention. Thus, a *prima facie* case of obviousness does not exist based on the Kumozaki et al. reference and the Klink reference.

Similarly, the Touma et al. reference describes a point-to-multipoint system, and thus the analysis regarding the combination of such a system with the point-to-point system described in the Klink reference is the same as discussed above with respect to the proposed combination of the Kumozaki et al. reference and the Klink reference. The two systems described in the Touma et al. reference and the Klink reference differ to an extent that a motivation to combine the references in the manner proposed in the Official Action simply did not exist at the time of the present invention. Thus, a *prima facie* case of obviousness does not exist based on the Touma et al. reference and the Klink reference.

Thus, the Applicants respectfully request the withdrawal of the obviousness rejections of independent Claims 19 and 23. The dependent claims are considered allowable for at least the reasons advanced for the independent claim from which they depend.

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Consequently, in view of the above discussion, it is respectfully submitted that the present application is in condition for formal allowance and an early and favorable reconsideration of this application is therefore requested.

Respectfully Submitted,

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